

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FADIL DELKIC,)	
)	
Plaintiff,)	
v.)	CASE NO:
)	1:07-CV-1864-BBM
VLADIMIR DJURDJEV,)	
Individually and/or d/b/a)	
UNITED CARGO, INC., or d/b/a)	
MARUNTE TRUCKING, INC., or)	
d/b/a UNITED 2 LOGISTICS,)	
INC., and/or d/b/a JOHN DOE)	
COMPANY and/or JOHN DOE)	
CORPORATION, AND)	
BOJAN ("BOB") PANIC, Individually)	
and/or d/b/a UNITED CARGO, INC.,)	
or d/b/a MARUNTE TRUCKING, INC.,)	
or UNITED 2 LOGISTICS, INC.,)	
and/or d/b/a JOHN DOE COMPANY)	
and/or JOHN DOE CORPORATION,)	
)	
Defendants.)	

**RESPONSE TO PLAINTIFF'S SECOND MOTION FOR LEAVE TO
AMEND, CLARIFY AND/OR SUPPLEMENT COMPLAINT AND
PRAYERS FOR RELIEF AND AUTHORITY THEREFOR**

Comes now Defendants Vladimir Djurdjev ("Djurdjev") and Bojan Panic ("Panic," collectively "Defendants"), appearing by and through counsel of record, without waiving and reserving all other defenses available, who hereby file this

Response to Plaintiff's Second Motion for Leave to Amend, Clarify and/or Supplement Complaint and Prayers for Relief and Authority Therefor [sic] ("Second Motion for Leave to Amend Complaint") as follows:

ARGUMENT

The Federal Rules of Civil Procedure, Rule 15(a) state that "a party may amend its pleading once as a matter of course." Fed. R. Civ. P. 15(a)(1). However, if a party wishes to amend its pleadings more than once, he may amend only "with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2).

The United States Supreme Court has held that leave to amend only "in the absence of any apparent or declared reason—such as . . . futility of amendment."

Foman v. Davis, 371 U.S. 178, 83 S.Ct. 227 (1962). "[A]n amended complaint is futile if the complaint as amended would not survive a motion to dismiss."

Monroe v. Williams, 705 F.Supp. 621, 623 (D.D.C. 1988), citing *Massarsky v.*

General Motors Corp., 706 F.2d 111, 125 (3rd Cir. 1983), *cert. den.*, 464 U.S. 937,

104 S.Ct. 348, (1983); *see also* *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531

(9th Cir. 1989) (holding that "leave to amend need not be given if a complaint, as

amended, is subject to dismissal."). Courts in the 11th Circuit have agreed. *See*,

e.g., *Rollin v. Kimberly Clark Tissue Co.*, 211 F.R.D. 670 (S.D. Ala. 2001);

Posner v. Essex Ins. Co., Ltd. 178 F.3d 1209, 1222 (11th Cir.1999) (finding denial

of leave to amend proper where plaintiffs, in opposition to motion to dismiss, failed to set forth additional facts sufficient to confer jurisdiction).

In this case, Plaintiff's Second Motion for Leave to Amend Complaint should not be granted because, as so amended, Plaintiff's Complaint would not survive a motion to dismiss. Plaintiff seeks to amend his Complaint in order to allege that venue is proper in this Court. (*See* Plaintiff's Second Amended Complaint and Prayers for Relief, pp. 5-6). However, Plaintiff's twice-amended Complaint does not allege sufficient facts for this Court to have venue. Plaintiff alleges that venue is proper because Plaintiff resides within the district and personal jurisdiction is proper in Georgia under the Georgia Long Arm Statute. However, under Federal Procedure, these facts do not satisfy venue. Jurisdiction and venue are two distinct concepts, and they should not be confused. *Brown v. Pyle*, 310 F.2d 95 (5th Cir. 1962). Plaintiff has not met either personal jurisdiction or venue requirements.

On January 2, 2008, Defendants filed their Motion to Dismiss Plaintiff's Complaint. Defendants have argued that Plaintiff's Complaint should be dismissed under Fed. R. Civ. P. 12(b) for several reasons including, without limitation, lack of personal jurisdiction, lack of venue, lack of subject matter jurisdiction, insufficiency of service of process, and forum non conveniens. Even considering

Plaintiff's Complaint as twice-amended, it would still be subject to dismissal. Therefore the amendment is "futile" and the Motion for Leave to Amend should not be granted.

CONCLUSION

Subsequent amendments to pleadings should only be granted by the court when justice demands it. However, motions for leave to amend should be denied where the complaint, even as amended, would not survive a motion to dismiss. Plaintiff's Second Motion for Leave to Amend Complaint should not be granted because Plaintiff's Complaint, even as amended, does not survive a motion to dismiss.

WHEREFORE, Defendants respectfully request that Plaintiff's Second Motion for Leave to Amend Complaint be denied and that Plaintiff not be granted leave to amend his Complaint beyond his first amendment. Further, Defendants respectfully request that Plaintiff be denied from using or referring to his Second-Amended Complaint in his Response to Defendants' Motion to Dismiss Complaint and for Attorney's Fees.

Respectfully submitted, this 12th day of February, 2008.

s/ Salmeh Fodor, Esq.
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Attorney for Vladimir Djurdjev
and Bojan Panic.
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and/or JOHN DOE CORPORATION,

Defendants.

CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.1D of the Local Rules of the Northern District of Georgia,
the undersigned counsel of record for Defendants hereby certifies that this pleading
has been composed in Times New Roman 14-point font.

SIGNATURE ON FOLLOWING PAGE

s/ Salmeh Fodor, Esq.
Attorney Bar No. 141464
Attorney for Vladimir Djurdjev
and Bojan Panic.
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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2008, I have electronically filed the
**Response to Plaintiff's Second Motion for Leave to Amend, Clarify, and or
Supplement Complaint and Prayers for Relief and Authority Therefor with**

the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorney of record:

Ralph J. Villani
Attorney for Plaintiff
2055-C Scenic Hwy., N.
Suite 404
Snellville, Georgia 30078
law2001@bellsouth.net

This 12th day of February, 2008

s/ Salmeh Fodor, Esq.
Attorney Bar No. 141464
Attorney for Vladimir Djurdjev
and Bojan Panic.
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